



## **EMSAAC POSITION STATEMENT ON “GRANDFATHERING” AND EXCLUSIVITY UNDER SECTIONS 201 AND 224 OF THE EMS ACT**

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City fire departments, fire districts, and private ambulance companies that provide emergency medical services (“EMS”) are governed by a comprehensive state law known as the EMS Act. Some of these providers are called “grandfathered” providers because of unique rights, obligations, and statuses they possess due to the years of service they have provided. This position statement provides a brief overview for these two distinct types of “grandfathering” and their relation to exclusivity of EMS services.

### **The EMS Act: A Brief Overview**

Enacted in 1980, the EMS Act regulates all aspects of emergency medical care in California. The EMS Act governs emergency medical care from two levels. At the state level, the California Emergency Medical Services Authority (“EMSA”) establishes the standards of patient care and practice for emergency medical providers. At the local level, local emergency medical services agencies, usually called “LEMSAs,” apply these state standards to public and private ambulance and fire departments within a specific county or a region, which is a LEMSA formed by two or more counties. LEMSAs are headed by experienced emergency medical physicians who are required by state law to assert medical control throughout their local EMS systems.

An important LEMSA duty is to adopt a transportation plan, which prescribes how ambulance services will be provided. These plans ensure that all EMS providers within a local EMS system work in an integrated and coordinated manner to provide effective prehospital emergency care.

### **Section 201 Grandfathering**

All EMS providers must follow the LEMSA’s transportation plan that establishes the roles and responsibilities of private and public ambulance providers. But certain cities and fire districts that had been providing EMS services before June 1, 1980 are considered to have “grandfathered” rights under “Section 201” of the EMS Act (Health & Safety Code § 1797.201). Section 201 allows eligible cities and fire districts to retain administration of their EMS services so long as they continue those services at the same or greater level they continuously provided prior to June 1, 1980. But these cities and fire districts, like all other EMS providers, are still subject to the LEMSA’s medical control over subjects such as, but not limited to, patient care, dispatch, and scene control. Eligible 201 cities and fire districts’ grandfathered rights include only the right to control administrative matters such as their staffing levels and where to station their EMS rolling stock and personnel.

## **Section 224 Grandfathering**

Four years after the EMS Act was enacted, the Legislature added “Section 224” to the Act (Health & Safety Code § 1797.224) to address concerns about antitrust liability. Section 224 authorized the creation of “exclusive operating areas,” or “EOAs” for EMS providers, as a means of providing state-authorized antitrust immunity to comply with federal antitrust laws. Section 224 requires that EOAs must be created by the LEMSA and then approved by EMSA.

There are two types of EOAs that a LEMSA may create. EOAs can be “competitive.” For these, which are based on a bidding process, the selected provider is awarded the exclusive right to serve a specific EMS area or subarea (often referred to as a zone) for designated intervals, such as five years. LEMSA may also create non-competitive EOAs using an eligible “grandfathered” provider. This type of EOA is permissible only if an EMS provider has continuously provided an eligible service without interruption and in the same “manner and scope” since January 1981.

## **Understanding the Differences Between Sections 201 and 224**

Sections 201 and 224 provide different types of “grandfathering” to qualified EMS providers. Some of the key differences between the two types of “grandfathering” are:

- Only a city or a fire district may qualify for Section 201 grandfathering. Section 201 does not apply to state agencies or departments, counties, or community services districts.
- The LEMSA may create an EOA “grandfathering” private and public providers under Section 224, awarding exclusive rights to provide emergency ambulance service, or advanced life support, or limited advanced life support, in a geographic area defined by the LEMSA.
- Section 201 “grandfathering” is automatic for a qualified city or fire district; LEMSAs must recognize the “grandfathered” status of qualified cities or fire districts. In contrast, LEMSAs have discretion to approve or deny “grandfathering” under Section 224.
- Section 201 does not provide cities and fire districts with exclusive rights to provide services nor does it allow a city or fire district to create exclusivity for other providers of service.
- Section 201 “grandfathering” can end only if the provider requests to or has entered into an agreement with its LEMSA. Section 224 “grandfathering” is approved for a specific duration (e.g. five years, with a right to extend for one additional five-year period) and must be reapproved by the LEMSA to continue.

## **Emergency Medical Services Administrators Association of California**

EMSAAC represents the 33 local emergency medical services (EMS) agency administrators representing all of California’s 58 counties. EMSAAC’s mission is to strengthen and promote local EMS systems to benefit the public.